

# **FREQUENTLY ASKED QUESTIONS ABOUT ADMINISTRATIVE RULE 9**

8/19/2015

## **Clerk FAQ's**

**Q1. How do we handle a pleading or document that contains confidential information that is not placed on green paper?**

- A. Education and assistance provided to attorneys and litigants will promote the proper drafting of pleadings and documents for filing. If a pleading or document is offered for filing that seriously violates Administrative Rule 9, the best practice is to file the pleading and note the filing in the Chronological Case Summary but impound it as a confidential document. Refer the confidential document to the Court which can then enter an Order to Comply with Administrative Rule 9 or Suffer Sanctions (see Appendix A, Form A-5) directed to the filing party to submit an amended pleading in compliance with the rule within a limited period of time or suffer the striking of the pleading. Pending the expiration of the time given to file the amended pleading, the Court may extend the time for filing a responsive pleading. This same procedure should be followed in the rarer instance of the tendering of a non-conforming document by a person or entity that is not a party to the litigation, e.g. a response by an employer concerning a wage assignment, income withholding order or garnishment order.

**Q2. Must information that was otherwise publicly available before January 1, 2005, be redacted after January 1, 2005.**

- A. Administrative Rule 9 does not require the Clerk's office to redact information in Court Records that was publicly available prior to January 1, 2005. The intent of the rule is that parties filing documents will comply with the basic confidentiality requirements of the rule and place information that the court may need, such as Social Security Numbers and account numbers, on a confidential filing form that remains segregated from other publicly available materials in a case file.

Care should be given that information that was public when entered into the record but has now become confidential with implementation of the rule should not be given wider dissemination; e.g. posting on a website.

**Q3. How fast must a Clerk or a court provide requested information?**

- A. Courts and Clerks should endeavor to provide information as promptly as possible. With very few exceptions, Administrative Rule 9 does not set time limits for providing information or replying to requests for information. The Indiana Public Record law, , establishes a timeframe of twenty-four hours if the requesting person is physically present in the office and seven days to respond to written or facsimile requests for public records from governmental agencies or entities. The response period may be observed by

actually producing the requested records or by advising the applicant that records will or will not be produced.

**Q4. Can we charge a fee for the time involved in responding to a request for information?**

- A. A court or Clerk may charge for actual time and materials expended in responding to a request. These charges may include a reasonable charge for photographic copies, tape recordings, etc.

Charges by Clerks must comply with IC-5-14-3-8 regarding copies from public agencies (counties). The statute specifically exempts from its coverage the judicial department of government. Courts should adopt fee structure substantially in conformance with those authorized by existing statutes.

**Q5. Must a Clerk or court employee monitor a person examining a record?**

- A. Administrative Rule 9 has not changed any requirements relating to procedures that a court or Clerk office follows in allowing individuals to examine court documents or files. Court and Clerk offices are already responsible to ensure that the court files are not damaged or altered in any way. Confidential material included in the file but maintained in a sealed envelope, or included in the file on confidential filing forms should be removed by a Clerk or court employee prior to providing a file for examination. Clerk and court offices are encouraged to control the examination of original court files in such a way as to prevent damage or unauthorized modification or changes to the Court Records.

**Q6. Must we provide a place for the public to review records?**

- A. Administrative Rule 9 does not require that space be given to the public to review records. As a practical matter, it is advantageous to provide some space or public terminals for public examination of records so that Clerk or court employees may monitor this activity and ensure that records are neither destroyed nor modified.

**Q7. Are records that were public and in existence prior to Administrative Rule 9 now confidential?**

- A. No. Records which were filed or created prior to January 1, 2005, that were open to public access when they were filed or created remain public even if they contain information now excluded from public access, such as Social Security Numbers or account numbers, and no redactions are required. Records that were confidential before January 1, 2005, remain confidential.

**Q8. If requested, do we have to provide a list of cases with case numbers filed each day? Judgments entered – civil, criminal?**

- A. The index of case filings except for case types that are confidential is considered a public record under Administrative Rule 9, and would be a record that could be requested and

should be provided by the court or the Clerk's office, or made available on the Internet or for public inspection during normal office hours. Similarly, civil judgments and criminal judgments that are recorded in the Judgment Book are public records and should be provided by the Clerk's office or made available for public inspection.

Civil and criminal judgment records exist separately within their respective cases and a court or Clerk is not required to create a list of civil or criminal judgments entered per day for production or public view. However, the judgments entered in individual cases are public records available for viewing or production upon request.

**Q9. Which adoption records are confidential?**

- A. Records of adoptions did not become confidential until July 8, 1941 when Acts 1941, Chapter 146, Section 6 became effective. Legislation concerning adoptions enacted before 1941 focused on the issue of providing legal proof of heirship so that the adopted child became an heir at law of the adoptive parents. The intent of the pre-1941 legislation was to make the adoption a public matter. All adoptions that took place before July 8, 1941 were recorded in the civil or probate order books.

Records of adoptions that took place before July 8, 1941 are not confidential by statute or under Administrative Rule 9 and should be open to public access.

All records about adoptions taking place after July 8, 1941 are confidential. Chronological Case Summaries, all orders and judgments, the case file, and index entries concerning an adoption should be kept confidential. Judgments and orders concerning an adoption should be placed in the Confidential Record of Judgments and Orders.

**Q10. In cases involving child abuse, what is considered confidential and what would be open to public access?**

- A. According to statutory law and to Administrative Rule 9, the records concerning child abuse that must be kept confidential are the reports and other information found in the case files submitted to the courts by the Division of Family and Children including its county offices that contain local child protection services. Allegations contained in pleadings filed in cases that are not confidential by law or rule do not constitute "records" that are confidential under AR 9(G)(2). Chronological Case Summary entries, as prescribed in Trial Rule 77(B), and entries in the Record of Judgments and Orders, as prescribed by Trial Rule 77(C), are open to public access.

**Q11. Do Juvenile CHINS (JC) cases fall under the child abuse category of confidential records?**

- A. No, but the cases are confidential anyway. Cases that generally fall into the child abuse category are adult criminal cases and some civil matters.

**Q12. What if child abuse allegations become part of a divorce case? How should they be handled in the context of divorce proceedings?**

**A.** Administrative Rule 9 recognizes that there are situations when a matter deemed confidential by statute will become an issue for public resolution within the context of a judicial proceeding. Although child abuse matters are deemed confidential, such matters also could be the issue in a contested domestic relations case in which a party has the right to a public proceeding. Under Administrative Rule 9, the public proceeding prevails and the allegations are considered public unless:

1. a party or a person affected by the release of the information affirmatively requests, prior to or contemporaneously with its introduction into evidence, that the information remain excluded from public access under AR 9(G)(4),
2. the court makes an individual ruling on the matter and excludes the information from public access under subsection (G)(5) or
3. seals the records under to IC-5-14-3-5.5.

**Q13. What is open to the public in juvenile delinquency cases and what is confidential?**

**A.** Administrative Rule 9 permits the disclosure of those juvenile records specifically deemed open under statute. The statutes involved are found in IC 31-39-2, which is entitled “*Persons Entitled to Access to Juvenile Court Records.*” For example, IC 31-39-2-8 discusses public access to records of juvenile delinquency proceedings. Under subsection (a) juvenile records are available to the public ...

*whenever a petition has been filed alleging that a child is delinquent as the result of any of the following alleged acts or combination of alleged acts:*

- (1) An act that would be murder or a felony if committed by an adult.*
- (2) An aggregate of two (2) unrelated acts that would be misdemeanors if committed by an adult, if the child was at least twelve (12) years of age when the acts were committed.*
- (3) An aggregate of five (5) unrelated acts that would be misdemeanors if committed by an adult, if the child was less than twelve (12) years of age when the acts were committed.*

However, under subsection (b) only certain information and records may be made available to the public even in the three situations discussed above. *Only* the following information may be released to the public:

- (1) child's name;*
- (2) child's age;*
- (3) nature of the offense;*
- (4) chronological case summaries;*
- (5) index entries;*

- (6) *summons;*
- (7) *warrants;*
- (8) *petitions;*
- (9) *orders;*
- (10) *motions ("excluding motions concerning psychological evaluations and motions concerning child abuse and neglect"); and*
- (11) *decrees;*

If the child has been adjudicated a delinquent child for an act or combination of acts as outlined above in IC 31-39-2-8 (a), then the child's photograph also may be released.

It is the duty of the Clerk to keep all other records confidential of the child alleged to be or adjudicated a delinquent child. Most of the confidential records are known as the "*social*" as opposed to the "*legal*" records of the juvenile court. These "*social*" records include evaluations from probation officers, case workers, physicians, guardians ad litem, school guidance counselors, and psychologists. **The statutory language includes the following instructions to the Clerk: "*The Clerk of the juvenile court shall place all other records (excluding the eleven "legal" records listed above) of the child alleged to be or adjudicated as a delinquent child in an envelope marked "confidential" inside the court's file pertaining to the child.*"** The confidential information in the envelope may only be released to those authorized to receive such information. In addition, "*the identifying information of any child who is a victim or a witness shall remain confidential.*"

IC 31-39-2-10 allows a permissive disclosure of "legal records" if such release best serves the "*interests of the safety and welfare of the community.*" When exercising this discretion, the court ...

*shall consider that the best interests of the safety and welfare of the community are generally served by the public's ability to obtain information about:*

- (1) the alleged commission of an act that would be murder or a felony if committed by an adult; or*
- (2) the alleged commission of an act that would be part of a pattern of less serious offenses.*

Under AR 9(G)(1) when evidence in Case Records that is excluded from public access pursuant to AR 9 is admitted into the record of a hearing that is not open to the public by statute or court order, the information remains excluded from public access. Thus, anyone seeking access to the information must petition the court for access.

The issue of access is subject to IC 31-39-2-10 and also AR 9(G)(7) which appear to pose a conflict. The Records Management Committee has examined this issue and adopted the view that AR 9(G)(7) controls, thus requiring proof by clear and convincing evidence in order to authorize disclosure.

**Q14. In cases where civil judgments occur as a result of a juvenile delinquency case, should the child's name be placed in the Judgment Docket?**

- A. In situations where civil judgments arise against a juvenile in a juvenile case, the juvenile's name should be placed in the Judgment Docket. Neither the Indiana Code nor AR 9 have provided for the confidentiality of money judgments rendered against juveniles. Under I.C. 34-55-9-2, money judgments become liens against the real property and chattels real of the judgment debtor if it has been entered and indexed as required by law. Failure to index the judgment as required by I.C. 33-32-3-2 deprives the judgment creditor of their lien.

**Q15. Are paternity cases confidential?**

- A. Paternity records became confidential on July 1, 1941. Before 1941, paternity matters were handled as bastardy proceedings, and the records generated by these proceedings were not, and are not, confidential. All records concerning paternity cases filed on or after July 1, 1941, are confidential until July 1, 2014 when records involving proceedings that pertain to paternity, custody, parenting time and child support issues concerning a child born to parents who are not married to each other become accessible as a public record.

Effective July 1, 2014 the Indiana Supreme Court amended Administrative Rule 9(G) so that paternity Case Records created between July 1, 1941 and July 1, 2014 remained confidential. As a result the public may have access to Chronological Case Summaries, Index entries, summonses, warrants, petitions, orders, motions and decrees entered after July 1, 2014.

**Q16. In situations where civil judgments occur as a result of a paternity case, should the names of the parties be placed in the Judgment Docket?**

- A. In situations where civil judgments arise from paternity cases, the names of the parties should be placed in the Judgment Docket. Neither the Indiana Code nor AR 9 have provided for the confidentiality of money judgments rendered against juveniles. Under I.C. 34-55-9-2, money judgments become liens against the real property and chattels real of the judgment debtor if it has been entered and indexed as required by law. Failure to index the judgment as required by I.C. 33-32-3-2 deprives the judgment creditor of their lien.

**Q17. How are pre-sentence reports handled with the general court file?**

- A. By statute (see IC 35-38-1-12 and IC 35-38-1-13) and Administrative Rule 9(G)(2)(b), pre-sentence reports are confidential. The reports should be produced on green paper.

The best practice is to file and maintain these reports separately from the case file. If the pre-sentence reports are placed in the case file, then procedures such as placing the pre-sentence report in a sealed evidence envelope should be used.

**Q18. Are victims of crimes allowed to view pre-sentence reports and provide input to them?**

A. In 1999, the General Assembly enacted legislation to give victims of crimes certain rights. One of these rights was to have greater input into the sentencing process including “the right to make a written or oral statement for use in the preparation of the pre-sentence report” [see IC 35-40-5-6(a)]. Notwithstanding the confidentiality requirements of IC 35-38-1-13, “*the victim has the right to read pre-sentence reports relating to the crime committed against the victim*” with certain exceptions. Victims still may be restricted from seeing the following information included in the pre-sentence report [see IC 35-40-5-6(b)]

- *The source of the confidential information*
- *Information about another victim*
- *Other information determined confidential or privileged by the judge in a proceeding.*

Under IC 35-40-6-7(5), the prosecuting attorney has the duty of notifying the victim of “*the victim’s right to review the pre-sentence report, except those parts excised or made confidential by*” IC 35-40-5-7.

**Q19. What is open to public access and what is confidential in underage marriage petition cases?**

A. Under statute and Administrative Rule 9(G), underage marriage petitions and the orders resulting from these petitions are confidential. IC 31-11-1-6(c) states, “*A court’s authorization granted under subsection (a) [subsection (a) refers to the granting of an underage marriage license by the court] constitutes part of the confidential files of the Clerk of the circuit court and may be inspected only by written permission of a circuit, superior, or juvenile court.*” Such orders are excellent candidates for inclusion in the Confidential Record of Judgments and Orders. Case files, Chronological Case Summaries, and court orders concerning underage marriage petitions and orders should be kept confidential. Ironically, the marriage license records created because of the court order are public records.

**Q20. What case type designation under Administrative Rule 8 should be used with underage marriage petition cases?**

A. The *Civil Miscellaneous* (MI) case type designation should be used. Some Clerks and courts have mistakenly been using the *Juvenile Miscellaneous* (JM) case type designation in underage marriage petition cases rather than the *Civil Miscellaneous* (MI) case type designation. As stated in IC 31-11-1-6(b), “*a circuit or superior court*” may receive a petition and make an order authorizing the Clerk of the circuit court to issue a marriage license to the underage petitioner(s). Only a juvenile court, or a court with juvenile jurisdiction, may handle a *Juvenile Miscellaneous* (JM) case while all circuit and superior courts may handle a *Civil Miscellaneous* (MI) case.

**Q21. When do arrest warrants, search warrants, and indictments or informations become open to public access?**

- A. Administrative Rule 9 has attempted to incorporate the practice of many courts concerning arrest warrants, search warrants, and indictments and informations. Warrants and indictments need to be kept confidential if they are going to accomplish their intended purpose. However, once they have been served and the Clerk has knowledge of service, then there is no longer a need for confidentiality. Administrative Rule 9(G)(2)(b) makes arrest warrants, search warrants, and indictments and informations confidential, if ordered by the court, until the return of duly executed service. To the extent that any of these documents contains complete Social Security Numbers or account numbers, provisions must be made to ensure compliance with the non-public nature of that information, such as filing the warrant, indictment or information on green paper.

**Q22. What is confidential and what is open to public access in mental health cases?**

- A. The main intention of Administrative Rule 9 in dealing with mental health cases is to protect the personal medical records of the person facing a mental health hearing. In order to comply with state law and Administrative Rule 9(2)(b), the medical records must be kept confidential.

One area of confusion that has developed concerning mental health cases is how the name of the person involved in a mental health hearing should be entered in the appropriate records. The full name of the person involved should be listed on the Chronological Case Summary, and this record, including the non-confidential portions of the Case Record, are open to public access.

If court orders resulting from a mental health hearing contain confidential medical information, orders in mental health cases should be placed in the Confidential Record of Judgments and Orders. However, a court's conclusion that a person suffers from a mental disease or defect, and even stating it with particularity, is not confidential medical information.

**Q23. Since several of the inheritance tax forms are confidential, what are some filing strategies when dealing with inheritance forms within an estate case?**

- A. Several filing strategies exist on how to manage inheritance tax records, and one of these is to set up a dual filing system for estate case files with the open records being placed in one file and the confidential records being kept in the other. A second strategy would be to place the confidential inheritance records in a separate file drawer with the case number placed on the forms. A third strategy would be to place the confidential inheritance tax forms in a sealed envelope and place them in the estate case file.



**Q24. What information concerning jury lists is open to the public?**

- A. Under Jury Rule 10, personal information relating to a juror or prospective juror not disclosed in open court is confidential, other than for the use of the parties and counsel. The court is required to maintain that confidentiality to an extent consistent with the constitutional and statutory rights of the parties. Jury lists were included in Administrative Rule 9 to prevent problems such as the harassment of jurors. Some personal information may be disclosed in the jury selection process, and this information will become part of the public record. However, there is no requirement that addresses, telephone numbers, and other matters of a personal nature be published in the Record of Judgments and Orders. Under IC 33-4-5-9(b) and IC 33-4-5.5-7, the jury lists (names only) will be placed in the Record of Judgments and Orders that are open to the public.

**Q25. How should orders of expungement be handled?**

- A. Orders of expungement are confidential, and they should be placed in the Confidential Record of Judgments and Orders. It will be necessary for judges to state very clearly in the order whether the records to be expunged are only records dealing with the arrest or whether the Court Records concerning the case are to be expunged as well. Court Record

**Q26. What is the purpose of the Attorney General's Address Confidentiality Program?**

- A. The Address Confidentiality Program through the Office of the Attorney General has been established under IC 5-26.5, and a person, or a minor or incapacitated person for whom an application has been made, who has been a victim of domestic violence and who has a valid protective order may participate in this program. This program makes the Office of Attorney General an agent for the participant for purposes of service of process and receipt of mail.

Under IC 5-26.5-2-3(b), for purposes of the Indiana Access to Public Records Law (IC 5-14-3), *"the name, address, telephone number, and any other identifying information relating to the program participant are declared confidential."*

**Q27. What are the Clerk's duties concerning confidential materials in a Protection Order case?**

- A. The duties of the Clerk of court concerning the maintenance of a confidential file and the handling of the Confidential Form (confidential under IC 5-2-9-7) are outlined in IC 5-2-9-6(b). Under IC 5-2-9-6(b)(1), the Clerk is to *"maintain a confidential file to secure any confidential information about a protected person designated on a uniform statewide form prescribed by the division of state court administration."*

Under IC 5-2-9-6(b)(2), the Clerk of court is to provide a copy of the Confidential Form *"that accompanies the Indiana order to the following:*

(A) *The sheriff of the Indiana county in which the order was issued.*

- (B) *The law enforcement agency of the municipality, if any, in which the protected person resides.*
- (C) *Any other sheriff or law enforcement agency designated in the Indiana order that has jurisdiction over the area in which a protected person may be located or protected."*

The entirety of the Protective Order case file is not confidential. Only the original of the Confidential Form filed by the petitioner or by the prosecuting attorney is to be placed in the confidential file that the Clerk has established.

A second item that will be placed in the confidential file will be the "Confidential Page" (page four) for a change of address of the Notice of Extension or Modification form. If either the petitioner's address or the respondent's address changes, then page four (4) of the form must be completed by the petitioner and filed with the Clerk, and the Clerk should place the original of this page in the confidential file. Please note, however, that the change of address page (page four) will only be completed and filed with the Clerk if there is a change of address. The Confidential Page is confidential because it contains the address and the telephone number of the petitioner and an alternate telephone number and address for notification purposes.

If the Confidential Page is filed along with the rest of the Notice of Extension and Modification form, a copy of the Confidential Page will be sent to the Protection Order Depositories listed above along with the rest of the form. The original, as noted, is to be placed in the confidential file as required by IC 5-2-9-6(b)(1).

**Q28. Should the petitioner's address and telephone number be placed on the CCS in a Protection Order case?**

- A. Since the Chronological Case Summary in a protective order case is not confidential, the petitioner's address and telephone number should not be placed on the CCS form. While IC 34-26-5-7 specifies that a petitioner may omit providing an address on all nonconfidential documents filed with the Clerk, IC 5-2-9-7 provides that all information provided on the confidential form required of all petitioners is confidential. The form requires the furnishment of a petitioner's address as well as telephone number. Rather, it is recommended that the following information be used instead: *"The address and the telephone number of the petitioner are confidential under IC 5-2-9 and Administrative Rule 9 of the Supreme Court of Indiana."*

**Q29. Must subpoenas be issued using green paper?**

- A. Yes, if the subpoena contains the address, phone number, dates of birth or other information that tends to explicitly identify a natural person who is a witness or victim in a criminal, domestic violence, stalking, sexual assault, juvenile or civil protection order case.

Under IC 5-2-9-6(c), sheriffs and law enforcement agencies, after receiving a copy of the Confidential Form from the Clerk, are to establish a confidential file in their Protection Order Depositories in which the Confidential Form is to be kept.

**Q30. How should orders to seal records be treated regarding the RJO and the CCS?**

- A. Orders to seal records are confidential, and they should be placed in the Confidential Record of Judgments and Orders. The case file, all orders and judgments concerning the case in the Records of Judgments and Orders, and the original Chronological Case Summary should be placed in a sealed evidence envelope. The sealed records are to be treated as confidential records, and access to the sealed records will be restricted until an order to unseal the records is given.

The original Chronological Case Summary is to be placed in the sealed evidence envelope with the other sealed records. To replace the original Chronological Case Summary, a replacement CCS should be created containing only the case number, a statement that the case had been ordered sealed, and the date that the order to seal the records of the case had been issued.

Except the order to seal the records, which is to be placed in the Confidential Record of Judgments and Orders, all orders and judgments pertaining to the case are to be placed in the sealed evidence envelope. To replace all orders and judgments pertaining to the sealed case found in the Records of Judgments and Orders, a replacement page should be inserted containing only the case number, a statement that the case had been ordered sealed, and the date that the order to seal the records of the case had been issued.

**Q31. Can a party file a divorce petition using the initials only of the parties?**

- A. Court Records and questions of their confidentiality are governed by [Administrative Rule 9](#). Specifically [Administrative Rule 9\(G\)](#) focuses on documents that may be disclosed or held confidential. There is nothing in [Administrative Rule 9\(G\)](#) that allows a divorce petition between adults to be filed with initials only. That being said, [Administrative Rule 9\(G\)\(4\)](#) does have a process whereby a person affected by the release of the information may petition the court to prohibit public access to information in a Court Record. There must be notice to the other parties and a hearing is always required. The standards a judge must use to grant this request are very high, however.

## **Citizen's FAQ**

**Q1. What is the difference between records “not accessible for public access” and those that have been sealed under statutory authority?**

- A. Records sealed under statute are more secure because no one is entitled to view the records without court authorization. Records “not accessible for public access” are only

secure from public access but may be viewed by court or Clerk staff and the parties to the case and their lawyers.

**Q2. Can I obtain the mailing address and phone number of a party to a case?**

- A. Yes, the mailing address and phone number of parties to a case is a record accessible to the general public unless a court order has been issued restricting access.

**Q3. Can I obtain the mailing address and phone number of a witness or the judge handling a case?**

- A. No. These records are not accessible to the public.

**Q4. I was adopted in this county. Can I review the adoption file to learn about my natural parents and the reasons for my adoption?**

- A. Information contained in court adoption files is generally excluded from public access by anyone including the person who was adopted. IC 31-19-24 provides a procedure to seek information related to an adoption and requires the filing of a written petition in a court with probate jurisdiction in the county where the adoption was granted.

**Q5. As a victim of a crime can I obtain the pre-sentence report related to the offense committed against me?**

- A. While pre-sentence reports are designated as confidential Court Records and are not accessible to the public, a crime victim is entitled under IC 35-40-5-6 to **read** the report related to the crime committed against them except for portions containing the source of confidential information, information regarding another victim or information determined by the court to be confidential or privileged.

**Q6. Can I see an inheritance tax schedule or tax records to see if assets exist that may be transferred to a person against whom I have a judgment? What if the records were entered into evidence in a court proceeding?**

- A. Court orders determining inheritance tax due regarding a transfer of property to a beneficiary are confidential as required by IC-6-4.1-5-10 but the inheritance tax schedule filed by the personal representative is not. Copies of the tax determination order must be sent to each beneficiary plus any other person who has filed for receipt of notice of court proceedings under IC-6-4.1-5-3.

Evidence presented in court proceedings is not confidential and may be reviewed unless an order has been entered prohibiting public access.

**Q7. Are my Case Records available to the public?**

- A. All information contained in Case Records is accessible by the public unless declared confidential by Administrative Rule 9(G) unless a person affected by release of the information has sought or obtained an order prohibiting public access under Administrative Rule 9(G)(4) or has made a timely assertion of confidentiality under AR 9(G)(5).

**Q8. I want to handle my case without an attorney. What should I know about filing documents with the court?**

- A. You are subject to the same standards and requirements as an attorney and must comply with the filing requirements of Administrative Rule 9 related to providing confidential information.

**Q9. Are all Court Records available through the Internet?**

- A. No. Currently more than fifty courts have the ability to provide certain records, on a cost free basis, through the internet through the Odyssey case management system directed by the Indiana Supreme Court. Odyssey records are available at <https://mycase.in.gov/default.aspx> .

A smaller number of courts also offer internet case information through other case management systems. Other vendors offer similar services for a fee or provide a limited amount of free records. In many instances information must be obtained directly from the court or the court Clerk offices.

## **Judge and Court Staff FAQ**

**Q1. Is a recording of a court proceeding made by a court reporter a public record? If so, does the public have the right to come and listen to the recording as opposed to acquiring a transcript? Would they be entitled to make their own copy of the recording?**

- A. Recordings of court proceedings made by court reporters are public records regardless of whether they are produced on magnetic recording tape, compact disk, stenotype, shorthand or digitally recorded upon a computer hard drive unless the specific case type is confidential under Administrative Rule 9. See Administrative Rules 9(C)(2) regarding the definition of “Case Record” and 9 (D)(4) regarding access to audio and video recordings of proceedings. The public has the right to obtain the record within a reasonable period of time after making the request.

The Access to Public Records law, I.C. 5-14-3, provides that if the requesting party is not present when the request is made, a response is required within seven days. The response

must acknowledge the request and provide a statement of when and how the record will be provided even if production cannot be immediate, e.g. duties related to an ongoing trial.

A specific means of providing this type of record has not been defined but the time or difficulty of compliance is an important consideration. Allowing the requestor to listen to the recording may be too time consuming to be reasonable for the reporter or a court staff member since the custody and integrity of the original must be continuously maintained.

Providing a copy of the record is probably the most efficient and least time consuming method to provide public access. A reasonable charge for the production of the copy may be made and guidance on this issue may be found in IC-5-14-3-8. Under AR 10, each judge is administratively responsible for the integrity of the judicial records of the court and must ensure that measures and procedures are employed to protect such records from mutilation, false entry, theft, alienation, and any unauthorized alteration, addition, deletion or replacement of items or data elements. Under the Indiana Code of Judicial Conduct, Rule 2.17(1), a judge may authorize the use of electronic or photographic means for the presentation of evidence, the perpetuation of a record or other purposes of judicial administration. Under no circumstances should the original be provided to the requestor in order for them to create their own copy.

Requiring the purchase of a transcript would be so costly in many cases as to constitute a denial of access to the public record unless the requestor desires to obtain the record in that format. Given the time required to produce a transcript and the other duties of reporters, the reasonable time for producing the record may well lead the requestor to ask for a different format. If the case is on appeal, a copy of the transcript could be obtained from the Clerk upon its completion and filing.

In situations where the requested record results in provision of an audio and/or audiovisual copy of a court proceeding, the judge should issue an order specifically limiting its use and barring the recipient from broadcasting the received record in any manner.

**Q2. Are exhibits offered and/or introduced into evidence in a court proceeding public records? If so, must their review of them be supervised or may copies be created at their cost?**

- A.** Once identified and offered or admitted into evidence all exhibits are part of the public record unless the proceeding is confidential under Administrative Rule 9(G) or confidentiality was preserved under 9(G)(5).. If a review of the original is granted, the reporter or staff member should supervise because of their duty to maintain the custody and integrity of the exhibit.

The size, nature and extent of the exhibit will have a significant impact upon the time required by the reporter or staff member to allow their reading or viewing. The constraints of time also impact the reasonable time of and nature of the response. In many instances the production of copies of large documents at a reasonable charge will be the most efficient manner of responding to the request.

**Q3. Are documents that are prepared in the normal course of court administration and that may be used for personnel or administrative purposes public records?**

A. All administrative records produced by the court are public except for those listed in Administrative Rule 9(G)(3). Personnel records of a court are Court Administrative Records as defined by Administrative Rule 9(C)(3).

**Q4. Are juror questionnaires and the responses supplied by prospective jurors public records?**

A. Under Administrative Rule 9(G)(2)(b) and (3) and Jury Rule 10 personal information contained in juror questionnaires is confidential except for the use of the parties and counsel unless the information is disclosed in open court. Otherwise juror questionnaires and the responses of prospective jurors are public records.

**Q5. What if the parties waive their rights of confidentiality by filing documents containing information that would be confidential?**

A. Under Administrative Rule 9 a party does not have the right to file a document containing information concerning themselves or third parties deemed confidential under the rule unless they adhere to the requirements of the rule concerning how the information is to be presented.

**Q6. Can the parties waive confidentiality and avoid the filing requirements of Administrative Rule 9 or authorize the release of information?**

A. Administrative Rule 9 does not contain a provision for a waiver of confidentiality except as stated in section G (6) and (7) which allows the release of (previously provided) information if it is released by all parties to whom it pertains. Parties must tender all information excluded from public access in the manner required by the rule.

**Q7. Litigation by unrepresented individuals is increasing with the prospect that confidential information will be included in documents filed with the court. Is the court required to examine these documents for compliance with Administrative Rule 9?**

A. The responsibility for compliance with Administrative Rule 9 concerning filed documents rests upon the party filing the document. A court is not required to screen documents presented for filing. Section 9(J) provides immunity for unintentional or unknowing disclosure of confidential material. Since the Bar and public must be educated about the requirements of the rule and those that implement it, it would be a good idea to require the Clerk to provide information concerning confidentiality requirements to those who want to initiate a case.

If a pleading or document is offered for filing that violates Administrative Rule 9, the best practice is to file it, note the filing in the Chronological Case Summary but impound it as a

confidential document. Refer the confidential document to the Court which can enter an Order to Comply with Administrative Rule 9 or Suffer Sanctions (see Appendix A) within a limited period of time or suffer the striking of the pleading. Pending expiration of the time given, the Court may extend the time for filing a responsive pleading. This same procedure should be followed if a non-conforming document is tendered by a nonparty to the litigation, e.g. a response by an employer concerning a wage assignment, income withholding order or garnishment order.

**Q8. Is it not futile to make Court Records confidential since parties often must present the information to other offices to transact business and those offices will not or cannot keep the information confidential?**

- A. We can only control the information that comes into our systems but it is better that we reduce the access to sensitive information than to add to the number of sources from which the information can be inappropriately obtained.

**Q9. Where do judges go when they have questions about issues arising from Administrative Rule 9?**

- A. Contact Dave Remondini at the Office of State Court Administration (317-232-2542) for assistance in dealing with the issue.

**Q10. What is the reasonable cost for providing information requested?**

- A. Standards already exist with respect to the reasonable cost of providing copies of documents by public offices but do not specifically apply to the judicial branch of government. See IC-5-14-3-8 and I.C. 33-37-5-1(b).

Courts should adopt a fee structure substantially in conformance with those authorized by existing statutes. AR 9(F) provides that in granting a request for bulk distribution or compiled information, the Supreme Court may charge the recipient the fair market value of the information received. In establishing a fee structure, a trial court should not exceed a fair market charge for the provision of the requested information.

**Q11. How do we handle questions that ask for more research information about the time cases take to finish, etc.?**

- A. This really presents a public relations question rather than a question concerning access to public information under Administrative Rule 9. Offices are not required to create a special report to respond to any inquiry or reconfigure things to provide information that is not otherwise created or retained in the ordinary course of the business of the office.

**Q12. What do we do with scandalous materials contained in a pleading even if it is true?**

- A. Unless information contained in a pleading is defined as confidential under Administrative Rule 9, it does not have to be treated in a confidential manner.



**Q13. Is information contained in the cover page of a protective order confidential?**

- A. Administrative Rule 9 defines the information that is confidential and the information that is not. It is important to remember that the identifying information can still be sent to law enforcement.

**Q14. Are bank account numbers and Social Security Numbers on supplemental proceedings and warrants confidential?**

- A. Generally, information entered into evidence in open court is not confidential and, therefore, accessible to the public. AR 9(G)(5)(a) provides that when confidential information excluded from public access by AR 9 is presented during court proceedings closed to the public, the information remains excluded from public access.

**Q15. How do we deal with the need to put specific account numbers and dollar amounts in an order?**

- A. Trial Rule 58(C) requires orders to have confidential information put on separate confidential pages.

**Q16. How do we handle the volume of confidential information that will arise in certain types of cases; e.g. small claims cases, and create a burden on staff and courts?**

- A. Administrative Rule 9 does not create a “one-size fits all” approach. Each county will have its own opportunity to determine the best and most efficient manner to implement the rule and handle confidential information within the general requirements of the rule.

**Q17. Does Administrative Rule 9 place a burden on the media or others if they come into possession of materials that should be part of the sealed record?**

- A. No. Issues such as this would likely have to be handled on a case-by-case hearing basis and would be very dependent upon the position taken, if any, by the person or entity whose information was obtained.

**Q18. What can be done if pleadings are filed that violate Administrative Rule 9?**

- A. The Clerk, as the recipient of the pleading offered for filing that does not comply, has the first opportunity to address the issue and is justified in declining to accept the document. Alternatively, the Clerk can immediately impound the document as confidential and provide it to the Court for further action.

Upon examination by the Court an order can be entered impounding the document and ordering the offending party to promptly tender a document in compliance with the rule. A failure to comply could result in the striking of the document from the record or another suitable sanction. (See Form A-5).

**Q19. How do you handle exhibits containing inappropriate materials?**

- A. Administrative Rule 9 does not make any explicit exception for exhibits. Parties who submit a Court Record that is confidential under Administrative Rule 9(G) are, immediately upon learning of the improper submission, obligated to comply with the requirements of the rule to ensure proper exclusion. See Administrative Rule 9(G)(6)(b). A Court Record includes both pleadings and their attachments as well as evidentiary exhibits. Administrative Rule 9. In the event that an individual or entity wishes to make evidence introduced in a public proceeding non-public, the burden is upon that person or entity whose information will be disclosed to seek entry of an order prohibiting access under Administrative Rule 9(G)(5).

**Q20. What does a probation officer do if an insurance company or a representative of the U. S. military asks for the address of a probationer?**

- A. Probation records are confidential and may not be disclosed.

**Q21. We have received subpoenas for probation officers to testify about adult and juvenile probationers in civil cases. What should we do?**

- A. Since the testimony will probably involve a request to disclose confidential information contained in probation records, you should:
- a. consult with your judge,
  - b. develop a response form approved by the judge and county attorney that cites Administrative Rule 9 and its restrictions disclosure of confidential information.

Remember that the parties are entitled to petition the court to allow disclosure of information that would otherwise be confidential.

**Q22. Can a court play its recordings for the media if it might be broadcast?**

- A. [Administrative Rule 9](#) and [10](#) specify that judges must make sure the audio/video isn't broadcast (although it seems the only way to ensure that is to refuse to allow the making of copies).

**Administrative Rule 9(D) -- General Access Rule.**

- (1) A Court Record is accessible to the public except as provided in section (G).
- (2) This rule applies to all Court Records, regardless of the manner of creation, method of collection, form of storage, or the form in which the record is maintained.
- (3) If a Court Record, or portion thereof, is excluded from public access, there shall be a publicly accessible indication of the fact of exclusion but not the content of the exclusion. This sub-section (3) does not apply to court proceedings or administrative records which are confidential pursuant to law.

- (4) A court may manage access to audio and video recordings of its proceedings to the extent appropriate to avoid substantial interference with the resources or normal operation of the court and to comply with the Code of Judicial Conduct, Rule 2.17 [former Canon 3(B)(13)]. This provision does not operate to deny to any person the right to access a Court Record under Rule 9(D)(1).

#### **Administrative Rule10 – Security of Court Records**

(A) Court Responsibilities. Each judge is administratively responsible for the integrity of the judicial records of the court and must ensure that measures and procedures are employed to protect such records from mutilation, false entry, theft, alienation, and any unauthorized alteration, addition, deletion, or replacement of items or data elements.

##### *Commentary to Administrative Rule 10*

*The court is required to preserve the integrity of audio and video recordings of court proceedings. The judge may employ various methods for ensuring the recording is not altered, including but not limited to supervised playback for listening or copying, creating a copy of the recording for use during said playback, serving notice to the parties that the recording is being accessed, and providing a copy, clearly identified as such. As prescribed by Indiana Judicial Conduct Rule 2.17 [former Canon 3(B)(13)], because the court is further required to prohibit broadcasting or televising court proceedings, the court may employ methods to restrict publication of copies of court proceedings made during the pendency of the case.*

In situations where the requested record results in provision of an audio and/or audiovisual copy of a court proceeding, the judge should issue an order specifically limiting its use and barring the recipient from broadcasting the received record in any manner.